IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7093 of 2007()

CP. 85/06 OF SESSIONS COURT, THRISSUR
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PETITIONER/ACCUSED NO.4

IMTHIYAS,S/O.HAMSA,
KATTIL HOUSE, MATTUMMEL, CHAVAKKAD.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSEPCTOR OF POLICE
CHAVAKKAD POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7093 OF 2007

Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 4th accused. He faces indictment in a prosecution, inter alia, under section 307 read with 149 IPC. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings were registered also. The petitioner was released on bail at the crime stage, but later the petitioner has not entered appearance. Consequently, he finds coercive processes issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He has, therefore, come to this court with a prayer that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. The learned Prosecutor opposes the application. The learned Prosecutor submits that the petitioner may be directed to

surrender before the learned Magistrate and seek regular bail in the ordinary course.

4. I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharath Chaudhary and another Vs. State of Bihar** [AIR 2003 SC 4662], it is by now trite that the powers under section 438 Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in **Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339]**.

6. In the result, this petition is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed

to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

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